IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITION NOs:3991 of 1997 and 5228 of 1998

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Writ Petition No.3991 of 1997:

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Between:

The Special Officer, Government Krishi Society, Near P.W.D. Grounds, Vijayawada.

..... PETITIONER

AND

1 The Presiding Officer , Labour Court, Guntur.

2 Irujella Venkata Krishna Rao, S/o Perumallaiah, Ex-employee, H.No.16-

199-A, Near Head Office, Piduguralla, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue rule nisi calling for the records pertaining to the Award dated 01.04.1996 passed in I.D.No.169 of 1990 on the file of the Presiding Officer, Labour Court, Guntur as communicated by the Government of A.P., the Labour, Employment, Training and Factories (Lab-I) Department vide G.O.Rt.No.3076 dated 14.11.1996 and quash the same by issuing an appropriate writ, order or direction particularly one in the nature of writ of Certiorary declaring the said Award as arbitrary, illegal, irregular, unconstitutional and violative of the principles laid down under law and ab initio void and pass such other and further order or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.RAMANUJACHARI

Counsel for the Respondents: MR.V.V.L.N.SARMA

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Writ Petition No.5228 of 1998:

Between:

I.V Krishna Rao S/o Purumalayya
R/o Vijayawada , Krishna district.

..... PETITIONER

AND

1 The Special Officer KRISHI (Krishna Industrial Self Help Institution)
Near PWD Grounds , Vijayawada, Krishna District.
2 The Presiding Officer, Labour Court, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order one in the nature of writ of certiorari by calling for the records relating to and connected with the Award in Id 169/90 on the file of the 2nd respondent dt 1-4-96 and quash the same in so far as denial of back wages is concerned as illegal and grant such other just and consequential relief as this court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.V.L.N.SARMA

Counsel for the Respondents: MR.K.RAMANUJACHARI

The Court made the following:

COMMON ORDER:

These two writ petitions are filed by the management and the workman aggrieved by the award of the Labour Court passed in I.D.No.169 of 1990, dated 01.04.1996, under which the order of termination was set aside and reinstatement was ordered with continuity of service, but, however, without back wages.

The management is aggrieved against the order of reinstatement, while the workman is aggrieved against the denial of back wages. Hence, these two writ petitions.

The facts of the case are that the workman was originally appointed as a Clerk-cum-Typist on daily wage basis at Rs.12/- per day by an order dated 03.05.1981. The said order of appointment was ratified by the Managing Committee of the Society by proceedings dated 28.01.1982. The wages of the workman was increased from time to time and he has been continuously working upto 27.04.1987. But, however, on certain grounds, the workman could not attend the office from 22.04.1987 to 25.04.1987, therefore, he submitted a leave

application after returning from the village as he had to go urgently to his native place. The management-authorities sought for an explanation from the workman and rejected the leave application. From the award, it is also clear that the workman sought for further extension of casual leave from 22.04.1987 to 10.05.1987, which was again rejected. The management, therefore, on the ground that the workman continuously absented for 19 days from 22.04.1987 to 10.05.1987, terminated his services by proceedings dated 11.05.1987. As, according to the workman, the said order of termination was passed without conducting any enquiry and without following the procedure contemplated under law, he raised an industrial dispute before the Labour Court. Before the Labour Court, evidence was adduced by both sides and the Labour Court, after considering the evidence adduced by both sides, found that the termination order passed by the management is contrary to law as it was not preceded by the necessary enquiry as required under the provisions of the relevant Act and Rules. Therefore, the Labour Court set aside the order of termination with a direction to reinstate the workman into service with the benefit of continuity of service, but, however, denied back wages.

The learned counsel for the management contended that since the workman was only engaged as a daily wage employee, he is not entitled for any order of reinstatement. According to the learned counsel, the workman will be engaged as and when there is work and if there is no work, his services would not be availed. Therefore, it is not required to conduct any enquiry for termination of the services of such daily wage earner. The learned counsel also contended that the Government has frozen about 94 vacancies and now, there are no vacancies where the workman can be reinstated and continued.

The workman, on the other hand, supported the award of the Labour Court insofar as reinstatement is concerned. But, however, contended that the Labour Court was not justified in denying the back wages as the termination of his services was illegal and contrary to law. When such proceedings are set aside, as a natural corollary,

back wages ought to have been awarded. The denial of such benefit, is illegal and without jurisdiction and, therefore, sought for setting aside the order of the Labour Court to the extent of denial of such back wages.

Heard both sides and considered the material on record.

Admittedly, the workman was appointed as early as in the year 1981, though it is alleged, on daily wage basis. But, however, the copy of the order of appointment was not placed before this Court. Admittedly, the workman was continued in service till April, 1987. But, however, on the ground that the workman absented from duty for 19 days without obtaining prior leave, his services were terminated. Such termination was not preceded by any enquiry or any show cause notice, as such, the procedure contemplated under law was not followed and the Labour Court has rightly set aside the said proceedings and ordered reinstatement. Though the learned counsel for the management contended that the workman was only a daily wage earner, therefore, he is not entitled for any benefit even though his services were dispensed with or terminated without conducting any enquiry, the said contention of the learned counsel for the management is devoid of merit.

When once the workman is allowed to work continuously for more than 240 days, his services can be terminated only in accordance with the provisions of the Industrial Disputes Act, 1947. In the light of the finding of the Labour Court that the management failed to follow the procedure contemplated under law, the award of the Labour Court setting aside the order of termination and reinstatement of the workman into service, cannot be faulted with.

Coming to the back wages, the workman contended that the denial of back wages is not proper and just. Admittedly, the services of the workman were dispensed with as early as in the year 1987, but the workman approached the Labour Court only in the year 1990 i.e., after 3 years and further, it took 6 years for the Labour Court to adjudicate upon the issue. Therefore, admittedly, the workman did

not render any service to the management. Further, as found by the Labour Court, the unauthorized absence or absence without prior sanction of leave itself is a serious misconduct, but before taking any action on such misconduct, the management failed to follow the procedure contemplated under law; therefore the order of termination was set aside and reinstatement was ordered.

In the light of the misconduct committed by the workman, and as there was also delay on the part of the workman to approach the Labour Court seeking appropriate relief, the denial of back wages is proper and just.

Under the circumstances stated above, the workman is not entitled to any back wages.

Accordingly, both the writ petitions are dismissed. No costs.

03.09.2004

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To

1 The Special Officer KRISHI (Krishna Industrial Self Help Institution)
Near PWD Grounds , Vijayawada, Krishna District.
2 The Presiding Officer, Labour Court, Guntur.

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